

OCT 22 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADELEKE AYODEJI ADEJOKU
AKINYELE, aka Ayodeji Adeleke Asean
Akinjokun aka Adefolcumba Adejuno,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 06-74478

Agency No. A96-128-657

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted September 25, 2007
Pasadena, California

Before: WALLACE, IKUTA, and N.R. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

The Board of Immigration Appeals (“BIA”) summarily dismissed Akinyele’s appeal due to his failure to specify the reasons for his appeal or file a brief. Although the BIA did not cite to 8 C.F.R. § 1003.1(d)(2)(i) (the regulation allowing summary dismissals), it was not required to do so. The BIA cited to the portion of Rojas-Garcia that requires a petitioner to apprise the BIA of the issues on appeal with sufficient particularity to avoid summary dismissal. See Rojas-Garcia v. Ashcroft, 339 F.3d 814, 821 (9th Cir. 2003). In context, this citation was sufficient to indicate that the BIA summarily dismissed Akinyele’s appeal. Even giving Akinyele’s *pro se* notice of appeal a liberal construction, it was inadequate to put the BIA on notice of the issues Akinyele intended to raise. Therefore, the summary dismissal was appropriate. Singh v. Ashcroft, 361 F.3d 1152, 1157 (9th Cir. 2004).

The BIA did not violate Akinyele’s due process rights by not sending him a new briefing schedule in response to the unusual circumstances of his reinstated claim. The BIA had previously notified Akinyele that failure to file a brief could lead to summary dismissal. When appealing his case to the BIA, Akinyele signed a form upon which the following warning was displayed prominently:

“WARNING: If you mark ‘Yes’ in item # 8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within

the time set in the briefing schedule.” The BIA appropriately reinstated Akinyele’s mistakenly withdrawn appeal, and complied with its own regulations in reopening Akinyele’s proceedings. See 8 C.F.R. § 1003.2(a) (prescribing the rules for the reopening of BIA appeals). These regulations do not require the BIA to reset the briefing schedule or remind the petitioner that the original briefing schedule stands. See id. Although Akinyele now claims the BIA’s orders were confusing, the orders did not make any changes to the original briefing schedule, and Akinyele did not attempt to resolve his confusion before the dismissal of his appeal. Akinyele’s mistaken understanding of the process does not excuse his obligation to file a brief.

Akinyele’s confusion regarding his obligation to file a brief does not give rise to a due process violation, given the clear notice provided by the BIA that failure to file a brief would lead to dismissal. See Singh v. Gonzales, 416 F.3d 1006, 1015 (9th Cir. 2005).

Dismissed in part and denied in part.